IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 30328 of 2007(I)
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OS.548/2005 of I ADDL.M.C.,NEYYATTINKARA
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PETITIONER:
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NESAN NADAR, S/O NALLATHAMPI NADAR,
SANTHOSH BAHVAN, PALAPPALLI MELE PUTHEN VEEDU,
NADUVARKOLLA DESOM, KOLLAYIL PAKUTHY.

BY ADV. SRI.R.GOPAN

RESPONDENTS:
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1. SUMATHY, D/O KAMALAM,
NIKSAL BHAVAN, VAZHARATHALA,
NADOORKOLLA DESOM, KOLLAYIL VILLAGE.

2. STUART NIKSON, NIKSAL BHAVAN,
VAZHARATHALA, NADOORKOLLA DESOM,
KOLLAYIL VILLAGE.

3. SUJA NIKSON, S/O SUMATHY,
NIKSAL BHAVAN, VAZHARATHALA,
NADOORKOLLA DESOM, KOLLAYIL VILLAGE.

4. DANIEL NIKSON, S/O NELSON,
NIKSAL BHAVAN, VAZHARATHALA,
NADOORKOLLA DESOM, KOLLAYIL VILLAGE.

5. STANLY JOHN, PUSHPAVILASOM BUNGLOW,
ADOTTUKONAM, DEVIYODE, IDAKODE VILLAGE,
VILAVANCODE TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**M.N.Krishnan, J.**

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**W.P(C).No.30328 of 2007**

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**Dated this the 15th day of October, 2007.**

**JUDGMENT**

This Writ Petition is filed seeking to set aside Exts.P9 and P10 orders passed by the First Additional Munsiff, Neyyattinkara. Ext.P9 is an order passed in I.A.No.4447 of 2006 in O.S.No.548 of 2005 whereby the defendants wanted issuance of a fresh Commission. The court held that without setting aside the previous Commissioner's report a new Commissioner cannot be appointed and therefore dismissed it. In so far as Ext.P10 is concerned, since batta was not paid, the application was dismissed.

2. Now the grievance of the writ petitioner is that the Commissioner has got biased against him and he may not get justice at the hands of the Commissioner. This Court in so many decisions, had made it very clear that the court cannot issue successive Commissions in the very same suit for the reason that it will create confusion and therefore unless there are special

circumstances it cannot be issued without setting aside the previous Commission's plan and report and the mere allegation that the Commissioner is biased or prejudiced is not a sufficient ground to set aside a Commission's report and plan. Therefore, the court was right in holding that no new Commission can be appointed.

3. Now I am informed that the Commissioner's plan and sketch are remitted to him. Whatever matters the writ petitioner wants to be noted I permit him to file a work memo before the Commissioner and the Commissioner is directed to note the particulars in his report. So far as the grievance of the writ petitioner is concerned, if the petitioner is already aggrieved by the Commissioner's report which is on record, this order will not stand in the way of the writ petitioner making an application for setting aside the Commissioner's sketch and report.

With this observation, the Writ Petition is dismissed.

M.N.Krishnan,
Judge.

ess 15/10